

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF TEXAS,

Defendant.

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Case No. 1:21-cv-00796-RP

**DEFENDANT’S SECOND ADVISORY REGARDING COMPLIANCE WITH THE
COURT’S PRELIMINARY INJUNCTION ORDER**

Defendant files this updated advisory in response to the Court’s invitation to propose the “means of disseminating th[e] information” required by its preliminary injunction “for this Court’s review and approval.” ECF 68 at 110.

Defendant proposes that the Office of Court Administration (“OCA”), a state agency in the judicial branch overseen by the Supreme Court of Texas and the Chief Justice, notify state judges and court clerks through an announcement via email. During the COVID-19 pandemic, OCA has used this method to notify state courts and clerks of emergency orders relating to court administration. As with any method of contacting a large and diverse group, it is possible that some courts or clerks will not be properly listed on the announcement list at any given time, but OCA considers this the generally accepted and reliable method of reaching those recipients by the agency responsible for providing resources and information for the efficient administration of the Texas judiciary.

Defendant proposes that OCA send the following announcement (attaching the preliminary injunction order) to state courts and clerks:

On October 6, 2021, Judge Pitman of the U.S. District Court for the Western District of Texas issued a preliminary injunction relating to S.B. 8, the Texas Heartbeat Act (the “Order,” attached). Here is the operative language from the

Order:

IT IS ORDERED that the State of Texas, including its officers, officials, agents, employees, and any other persons or entities acting on its behalf, are preliminarily enjoined from enforcing Texas Health and Safety Code §§ 171.201–.212, including accepting or docketing, maintaining, hearing, resolving, awarding damages in, enforcing judgments in, enforcing any administrative penalties in, and administering any lawsuit brought pursuant to the Texas Health and Safety Code §§ 171.201–.212. For clarity, this Court preliminarily enjoins state court judges and state court clerks who have the power to enforce or administer Texas Health and Safety Code §§ 171.201–.212.

Order at 109. The Order includes a requirement that Texas “inform all state court judges and state court clerks of this preliminary injunction and distribute [it] to all state court judges and state court clerks.” Order at 110. The Order also requires all state courts in Texas to “publish this preliminary injunction on all of [their] public-facing court websites with a visible, easy-to-understand instruction to the public that S.B. 8 lawsuits will not be accepted by Texas courts.” *Id.* Each court website’s home page should prominently use the exact language from Judge Pitman’s order—“S.B. 8 lawsuits will not be accepted by Texas courts”—followed by a link to the Order, as soon as possible.

The State has appealed Judge Pitman’s order. You will receive a follow-up email if and when there are any changes regarding the preliminary injunction.

Defendant believes this is the best way to comply with the notice requirements in the Order. In light of the Court’s willingness to “review and approv[e]” methods of complying with the preliminary injunction, Defendant thought it prudent to confirm that the Court approves of Defendant’s proposal. Defendant respectfully requests that the Court approve its proposal.

Date: October 8, 2021

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Respectfully submitted.

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COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on October 8, 2021, and that all counsel of record were served by CM/ECF.

/s/ Eric A. Hudson
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